FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are Necessary

Section 20-400.1

Specific Purpose:

This section is being amended to delete the word "voluntary." Language is being added to specify that the submission of food stamp debts to the Treasury Offset Program (TOP) is mandatory.

Factual Basis:

These amendments are necessary to comply with 7 CFR 273.18(n) which requires states to submit all recipient claims that are 180 days delinquent.

Sections 20-401(f)(3) and (4) and (i)(1)

Specific Purpose:

These sections are being amended to change the name of the Federal Tax Refund Offset Program to the TOP and to add the acronym. Additional benefits which have become eligible for intercept are also being added.

Factual Basis:

These amendments are necessary to comply with 31 U.S.C. 3716(c)(3) as amended by the Debt Collection Improvement Act (DCIA) of 1996. These amendments centralized the collection of federal debts using TOP. The federal tax refund offset program was merged into TOP in January 1999. Under the DCIA, many non-tax federal payments are eligible for intercept. In the Aktar v. Anderson 58 Cal.App.4th 1166 a preliminary order stated that administrative error overissuances could not be collected by involuntary means. On January 22, 1997 the Court of Appeals of the State of California issued a decision which lifted the ban in accordance with Public Law 104-193 (7 U.S.C. 2022(b)(1)).

Post Hearing Modification

Section 20-402.1

Specific Purpose:

In analyzing the public comments received, it was determined that a more clear definition of the term "legally enforceable" was necessary. This section is being amended to further define and clarify the term "legally enforceable".

Factual Basis:

The phrase "legally enforceable", as clarified, is consistent with the provisions of 31 CFR 285.2 and 7 CFR 273.18.

Section 20-402.2

Specific Purpose:

This section is being amended to delete language regarding an annual submission of eligible cases to tax intercept and delete the word "participating."

Factual Basis:

This amendment is necessary to comply with 7 CFR 273.18(n)(1) which specifies that as a state agency CDSS must submit all debts delinquent for 180 days to TOP. This amendment is also necessary to implement changes to the State's Welfare Intercept System (WIS) which was redesigned to allow for weekly updates to the database. The redesign was implemented in June 2001. Changing to a continuous system allowed for improved accuracy in the program. The word "participating" is being deleted since it is not necessary to specifically address the participating counties since it is mandatory for all counties to participate.

Section 20-403.24

Specific Purpose:

This section is being amended to delete language regarding a yearly deadline to remove individuals.

Factual Basis:

This amendment is necessary to comply with 7 CFR 273.18(n)(4)(ii) which states the requirements for when a debt must be removed from TOP. This amendment is also necessary to implement changes to the State's WIS which was redesigned to allow for weekly updates to the database. The redesign was implemented in June 2001. Changing to a continuous system allowed for improved accuracy in the program.

Sections 20-404.15, .2, and .3 et seq.

Specific Purpose:

These sections are being amended to update form requirements to correspond with the redesigned database and the statement regarding submission of cases by a specific date each year must be removed.

Factual Basis:

This amendment is necessary to comply with 7 CFR 273.18(n)(4)(i) which requires CDSS to follow FNS and Treasury procedures when the debt is in TOP. This amendment is also necessary to implement changes to the State's WIS which was redesigned to allow for weekly updates to the database. The redesign was implemented in June 2001. Changing to a continuous system allowed for improved accuracy in the program.

Section 20-405.1

Specific Purpose:

This section is being amended to specify that the certification needs to be completed by the county on a continual basis, not a one time occurrence.

Factual Basis:

This amendment is necessary to comply with 7 CFR 273.18(n)(1)(ii) which requires certification that debts are 180 days delinquent and legally enforceable. This amendment is also necessary to implement changes to the State's WIS which was redesigned to allow for weekly updates to the database. The redesign was implemented in June 2001. With the new ability to continually submit accounts for tax intercept it has become necessary for the county to certify the accuracy of this information.

Sections 20-406 Title, .1, .11, .3, and .4

Specific Purpose:

These sections are being amended to add "pre-offset" to the term "warning notices" for clarity. Section 20-406.1 is being further amended to delete reference to mailing pre-offset warning notices annually and to replace it with the requirement that the clients submitted to IRS are given 60-day notices. New language is being added to require that an annual pre-offset warning notice is to be mailed in September for all accounts submitted to the Franchise Tax Board.

Factual Basis:

This amendment to Section 20-406.1 is necessary to comply with 7 CFR 273.18(n)(2) which states the requirements for debtor notification. The amendment is also necessary

because the capability for the TOP to intercept various non-tax federal payments issued on a monthly basis, in addition to federal tax returns, has made it necessary to notify clients at the time they are submitted for tax intercept. This will allow clients the proper amount of time to dispute the overpayment.

Post Hearing Modification

Section 20-406.31

Specific Purpose / Factual Basis:

Public comments received determined clarification was needed with regard to the sequence of procedures that the county must follow when the off-set warning notices are returned "undeliverable". Taking the steps to clarify these procedures resulted in the information previously in this section being combined into new Sections 20-406.33 and .34. Therefore this section is being repealed.

Post Hearing Modification

Section 20-406.32 now renumbered as 20-406.31

Specific Purpose / Factual Basis:

Section 20-406.32 is being renumbered as 20-406.31 to keep the numerical continuity as a result of Section 20-406.31 being repealed.

Post Hearing Modification

Section 20-406.33 now renumbered as 20-406.32

Specific Purpose Factual Basis:

Section 20-406.33 is being renumbered as 20-406.32 to keep the numerical continuity as a result of Section 20-406.31 being repealed.

Post Hearing Modification

New Section 20-406.33

Specific Purpose:

Public comments received determined clarification was needed with regard to the sequence of procedures that the county must follow when the off-set warning notices are returned "undeliverable". This section is being adopted to clarify that a county shall obtain the best known address with regard to both federal and FTB intercept warning notices thus ensuring that all due process steps are taken.

Factual Basis:

Specifying that the best known address with regard to both federal and FTB intercept warning notices is obtained is consistent with the provisions of 31 CFR 285.2 and 7 CFR 273.18.

Post Hearing Modification

New Section 20-406.34

Specific Purpose:

Public comments received determined clarification was needed with regard to the sequence of procedures that the county must follow when the off-set warning notices are returned "undeliverable". This section is being adopted to ensure that all due process steps are taken by clarifying the following steps a county shall take after a number of attempts to mail have been made, the mail has been returned as undeliverable, and a more current address is not found by the CWD: 1) Either place the notice and the envelope in the case file and the file annotated to document the attempt to mail; or 2) record the attempt to mail on a computerized accounts receivable system and the notice and envelope filed centrally. The notice and envelope are to be retained in accordance with MPP Section 23-353 (Records Retention).

Factual Basis:

Specifying these procedures is consistent with the provisions of 31 CFR 285.2(d)(2)(i).

Final Modification:

Specific Purpose / Factual Basis:

Section 20-406.4

This section is being repealed as the provisions of this section are now incorporated in new Sections 20-406.33 and .34.

Handbook Section 20-406.5

Specific Purpose:

This handbook section is being amended to replace "federal tax refund" with "intercepted amount."

Factual Basis:

This amendment is necessary to comply with 7 CFR 273.18 which specifies the debtor's responsibility for payment of any collection or processing fees charged by the Federal government to intercept their payment.

Post Hearing Modification

Section 20-406.5 now renumbered as 20-406.4

Specific Purpose Factual Basis:

Section 20-406.5 is being renumbered as 20-406.4 to keep the numerical continuity as a result of Section 20-406.4 being repealed.

Section 20-409.1 et seq.

Specific Purpose:

This section is being amended to reflect a name change in the federal portion of the CalWORKs/Food Stamp intercept program.

Factual Basis:

The Federal Tax Refund Offset Program no longer exists; it was combined with other federal intercept programs utilized by the Department of the Treasury Financial Management Services to form TOP.

b) Identification of Documents Upon Which Department Is Relying

7 CFR 273.18
7 USC 2022
31 USC 3716
Aktar v. Anderson 58 Cal.App.4th 1166

c) Local Mandate Statement

These regulations impose a mandate on local agencies but not on school districts. There are no reimbursable state-mandated costs because these regulations make only technical and clarifying changes.

d) Statement of Alternatives Considered

CDSS has determined that no reasonable alternative considered would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action.

e) Significant Adverse Economic Impact On Business

CDSS has determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

f) Testimony and Response

These regulations were considered as Item #3 at the public hearing held on September 10, 2003 in Sacramento, California. No public comment was received at the public hearing.

Written comments were received from the Western Center on Law and Poverty (WCLP) and Legal Services of Northern California (LSNC) during the 45-day comment period from August 1, 2003 to 5:00 p.m. on September 10, 2003.

The comments received and the Department's responses to those comments follow. Specifically identified section comments precede the General comments.

Section 20-401(f)(3)

1. Comment: (WCLP), (LSNC)

"After 'or administrative error (AE),' add 'except for AE overissuances for which collection pursuant to MPP section 63-801.222 has begun.'"

Response:

Tax Intercept is used as a last resort for county welfare departments to collect overpayments/overissuances on closed cases. A debt which is currently being collected through allotment reductions, such as the reductions pursuant to MPP Section 63-801.222, is not eligible for tax intercept as stated in MPP Section 20-403.21. Therefore, no revision is being made to the section in response to this testimony.

Section 20-403.2

2. Comment: (WCLP), (LSNC)

"The county may employ other means of collection to recoup food stamp AE overissuances from an individual who is no longer receiving food stamp benefits only if the 36-month period has not expired. See ACL 00-87, questions 6 and 7. At the end of the 36 period, the remaining balance must be forgiven.

"While food stamp AE overissuances of a former food stamp recipient, if in delinquency, may be referred to the tax intercept program during the 36-month period, the collection by any means, including tax intercept, must cease at the end of the 36th month. The county welfare department must notify the Department of Social Services ('DSS') to remove this individual from the tax intercept program.

"In addition, if the individual reapplies for aid and the 36-month period has not expired, collection pursuant to MPP section 63-801.222 may start again and continue until the end of the 36-month period. Upon re-application for food stamps, the county welfare department must also notify DSS to remove this individual from the tax intercept program.

"Section 20-403.2 lists cases that are not eligible for intercept but fails to list cases discussed above. A new section, 20-403.26, should be added to state, 'Cases in which food stamp AE overissuances have been collected pursuant to MPP section 63-801.222 and 36-month period of collection has expired. Prior to the end of the 36-month period, the county welfare department shall notify DSS to remove from the tax intercept program the individual who is no longer receiving food stamps and whose food stamp AE overissuance has been collected pursuant to MPP section 63-801.222.'

"Section 20-403.27 should also be added to state, 'Cases in which a former food stamp recipient for whom collection of AE overissuance pursuant to MPP section 63-801.222 has begun, reapplies for aid. Upon re-application, the county welfare department shall notify DSS to remove this individual from the tax intercept program.'"

Response:

In order for a county welfare department to utilize tax intercept to collect a debt, they must first determine that the debt is legally enforceable or there is a right of recovery as stated in MPP Section 20-403.1. There are many reasons a debt may not be legally enforceable or have a right of recovery, the expiration of a 36-month collection period due to MPP Section 63-801.222 is one of these reasons. It is not reasonable to list each specific situation in which a county welfare department cannot collect upon a debt. Therefore, no revision is being made to the section in response to this testimony.

Section 20-406.1

3. Comment: (WCLP), (LSNC)

"The proposed regulation which defines the notice which must be given prior to submission of a debt to TOP is inadequate. The proposed MPP section 20-406.1 requires notice to be given to the debtor '60 days prior to intercept for claims referred for collection through the IRS.' Section 20-406.11 provides that the notice must include information about the right to contest the referral and request an administrative review as outlined in section 20-407. Section 20-407, however, does not distinguish the intercept through TOP or FTB and does not provide for the 60-day period during which the recipient may present evidence and make a written agreement to repay the debt. As written, section 20-406.11 does not require the notice to include this information. In order to comply with federal regulations, these rights need to be added to the regulations. Section 20-406.113 should be amended to add at the end, 'including the right to have at least 60 days to present evidence that all or part of the debt is not enforceable or past due and the right to make a written repayment agreement.'

"31 C.F.R. § 285.2(d)(iii)(B) gives at least 60 days to the debtor to present evidence and make a repayment agreement, and MPP sections 20-407.1 requires a review to be provided within 10 days of the receipt of the request and a determination to be provided to the debtor within 10 days of the review. This review procedure then can take more than 80 days. As written, Section 20-406.1 impermissibly instructs that notice be given at least 60 days prior to the 'intercept,' and not prior to 'submission' to TOP. Accordingly, section 20-406.1 should be amended to state 'CDSS shall mail a pre-offset warning notice at least 80 days prior to the submission for collection through the IRS.'"

Response:

Under State and federal rules, a pre-offset warning notice is mailed to individuals at least 60 days prior to intercept. This mailing allows the individual 60 days to present any evidence that all or part of the debt is not past-due or legally enforceable as required by 31 CFR 285.2(d)(iii)(B). If an individual chooses to exercise their rights to contest the intercept on the 60th day then the debt is not eligible for tax intercept as of that day and will not be eligible until a decision has been made on the case, see Section 20-403.24. Therefore there is no need to send the notices 80 days prior to intercept, and no revision is being made to the section in response to this testimony.

Section 20-406.4

4. Comment: (WCLP), (LSNC)

"The proposed MPP 20-406.4. states that the pre-offset warning notice is to be sent to an address 'provided by the IRS.' However, TOP regulation requires a creditor agency to make "a reasonable attempt to notify the debtor if the agency uses the current address information contained in the agency's records related to the debt. 31 C.F.R. § 285.2(d)(2)(i). Creditor agency is defined as 'a Federal agency owed a claim that seeks to collect that claim through tax refund offset,' and the IRS is defined as 'the Internal Revenue Service, a bureau of the Department of the Treasury.' 31 C.F.R. § 285.2(a). Under the federal regulation, the pre-offset warning notice must be sent to the current address which DSS or county welfare department has in its records, and cannot simply rely on IRS to provide an address. This is particularly so because nothing in federal law requires the IRS to provide addresses to creditor agencies, and nothing in the proposed regulations requires DSS or the county welfare department to seek the address from the IRS. Taken literally, the regulation would mean the notice would never need to be sent to the debtor if the IRS does not provide addresses to creditor agencies. The proposed regulation should be changed so that the warning notice is sent to the current address in CDSS' or the county welfare department's records.

"Section 20-406.4 should be amended to add at the end of the first sentence 'and the current address in the county welfare department's or DSS' record.'"

Response:

Thank you for your comment. This section is being repealed and its provisions more clearly explained in new Sections 20-406.33 and .34.

General

5. Comment: (WCLP), (LSNC)

"Federal regulations require that delinquent Food Stamp overissuance claims be submitted to the Internal Revenue Service ('IRS') Treasury Offset Program ('TOP'). 7 C.F.R. § 273.2(n). However, submissions to TOP are limited to debts to federal agencies. 26 U.S.C. § 6402(d); 31 C.F.R. § 285.2(b)(1). A CalWORKs overpayment is a debt to a county welfare department and/or CDSS, not to a federal agency, and thus is not eligible to be referred to TOP. The proposed regulations should be clarified to ensure that CalWORKs overpayment claims are not submitted to TOP. This may be done by promulgating two separate sections to set forth the procedures and requirements for the tax intercept, one for the Franchise Tax Board ('FTB') and another for TOP.

"Pursuant to Manual of Policies and Procedures ('MPP') § 63-801.222, food stamp administrative error ("AE") overissuances are 'automatically compromised and recouped pursuant to the Lomeli v. Saenz court case settlement agreement. This agreement stipulates that administrative error overissuances are to be recouped by reducing the monthly allotment by five percent or $10.00, whichever is greater for up to a total of 36 consecutive calendar months.' ACL 00-87, question number 5 further clarifies that '[a]t the end of the 36 month time period, regardless of whether or not the client is on aid at that time, and regardless of whether or not allotment reductions have been made that entire time, any remaining uncollected balance is to be forgiven or compromised and may not be collected by any other means.'

"As written, the proposed regulations in ORD #0203-04 do not discuss how AE overissuances which have been or are being collected pursuant to MPP section 63-801.222 will be treated in the CalWORKs/Food Stamps Intercept Program."

Response:

See response to Comment #1.

6. Comment: (WCLP), (LSNC)

"TOP regulation requires, before submission of any debt to TOP, that the debtor be given 'at least 60 days to present evidence that all or part of the debt is not enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable.' 31 C.F.R. § 285.2(d)(iii)(B). The federal regulation also requires that the debtor be provided 'with an opportunity to make a written agreement to repay the amount of the debt.' 31 C.F.R. § 285.2(d)(iii)(C). In submission of food

stamp overissuance claims to TOP, Department of Treasury Rules must be followed. 7 C.F.R. 273.18(n)(1)(iii)."

Response:

See response to Comment #3.

g) 15-Day Renotice Statement

A 15-day renotice comment period was held from May 25, 2004 to June 9, 2004. The amended package was mailed to:

The Western Center on Law and Poverty
Attn: Nu Usha
3701 Wilshire Blvd., Suite 208
Los Angeles, CA 90010-2809

Legal Services of Northern California
Attn: Stephen Goldberg
619 North Street
Woodland, CA 95695

No written comments were received during this 15-day renotice. As a result, no changes have been made.